

UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEC 12 PM 2:22
(7)

EUNIECIA SNYDER, mother and NEXT FRIEND
OF REALITE PEEBLES, a minor,

Plaintiff,

v.

1:05cv0824

Richard Alan Enslen
Senior, U.S. District Judge

FRANKFORT-ELBERTA AREA SCHOOL
DISTRICT, FRANKFORT-ELBERTA
BOARD OF EDUCATION, THOMAS J. STOBIE,
and JEFF TOUSLEY, Defendants.

THOMPSON, O'NEIL & VANDERVEEN, P.C.

Daniel P. O'Neil (P37051)

Attorneys for Plaintiff

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COMPLAINT AND JURY DEMAND

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this complaint pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge. I do not know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.

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NOW COMES Plaintiff EUNIECIA SNYDER, mother and Next Friend of REALITE PEEBLES, a minor, and for her Complaint against Defendants, FRANKFORT-ELBERTA AREA SCHOOL DISTRICT, FRANKFORT-ELBERTA BOARD OF EDUCATION, THOMAS J. STOBIE, and JEFF TOUSLEY, states as follows:

1. Plaintiff, EUNIECIA SNYDER, is the mother and Next Friend of REALITE PEEBLES, age 8, and a resident of the county of Grand Traverse and the state of Michigan.
2. Defendant, FRANKFORT-ELBERTA AREA SCHOOL DISTRICT (hereinafter SCHOOL DISTRICT), is a public school district organized and operating pursuant to the laws of the state of Michigan and providing educational services in Benzie County and the state of Michigan.
3. Defendant, FRANKFORT-ELBERTA BOARD OF EDUCATION (hereinafter THE BOARD), is the statutorily appointed governing body of the FRANKFORT-ELBERTA AREA SCHOOL DISTRICT and exercises statutory supervision over the activities of the SCHOOL DISTRICT.
4. Defendant, THOMAS J. STOBIE (hereinafter STOBIE), was at all times pertinent hereto the Superintendent of the Frankfort-Elberta Public Schools.
5. Defendant, JEFF TOUSLEY (hereinafter TOUSLEY), was at all times pertinent hereto the Principal of the Frankfort-Elberta Elementary School located in Benzie County, Michigan where REALITE PEEBLES was a third grade student for the 2004-2005 school year.

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6. As the Principal of the Frankfort-Elberta Elementary School, defendant TOUSLEY was authorized by defendant SCHOOL DISTRICT to establish rules and policies for the use of buildings and facilities under his supervision, including the Frankfort-Elberta Elementary School.
7. As the Principal of the Frankfort-Elberta Elementary School, defendant TOUSLEY was authorized by the SCHOOL DISTRICT to establish the rules, procedures and policies relating to the conduct of the staff under his supervision, including the faculty at the Frankfort-Elberta Elementary School.
8. Jurisdiction is proper in this Court pursuant to 28 U.S.C. 1343(3).

COMMON ALLEGATIONS

9. Plaintiff re-asserts the allegations contained in paragraphs 1-8 as though set forth fully herein.
10. In the fall of 2004, REALITE PEEBLES, who is black, enrolled in the third grade at Frankfort-Elberta Elementary School in Frankfort, Michigan. At that time, REALITE PEEBLES was, upon information and belief, the only black student attending the elementary school.
11. During the course of the school year, REALITE PEEBLES was subjected to repeated racial slurs and threats from other students which substantially affected and interfered with her ability to obtain an education.

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12. Despite repeated reports to school officials, including defendants TOUSLEY, STOBIE and THE BOARD, defendants refused to take action to protect REALITE PEEBLES from the improper and discriminatory conduct of her fellow students.
13. During the 2004-2005 school year, REALITE PEEBLES was instructed and required by defendant TOUSLEY to use a separate bathroom facility so that the other students would "feel more comfortable." Incredibly, REALITE PEEBLES was forbidden by the Principal from using the bathroom facilities used by the other students.
14. REALITE PEEBLES' parents were never notified by defendants of their decision to require her to use separate bathroom facilities, nor were they provided a justification for their actions.
15. Upon discovering the discriminatory treatment being imposed on her daughter, Eunecia Snyder demanded that the school take remedial action to eliminate the disparate treatment and to prevent future discriminatory conduct by students and staff. Defendants STOBIE and TOUSLEY responded by advising REALITE PEEBLES' mother that she should avoid raising a dispute about the issue if she wanted to be "accepted into the community."
16. As a direct and proximate result of the discriminatory treatment described above, REALITE PEEBLES suffered damages which include but are not limited to: loss of educational opportunity, anger, anxiety, and humiliation.

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COUNT I

VIOLATION OF THE ELLIOT LARSEN CIVIL RIGHTS ACT

17. Plaintiff re-asserts the allegations contained in paragraphs 1-16 as though set forth fully herein.
18. The above-described conduct of defendants in failing to provide plaintiff with an educational facility free from discrimination, forcing REALITE PEEBLES to use segregated bathroom facilities, and in failing to inform her parents of this issue, unlawfully deprived plaintiff of her right to equal protection under the laws of the state of Michigan pursuant to article 1, Section 2 of the Michigan Constitution.
19. Defendants' failure to protect plaintiff from racially-based harassment which significantly impeded her constitutionally protected access to an education, and defendants' discriminatory response to those actions, was a violation of Michigan law.
20. Defendants' policy requiring plaintiff to use segregated bathroom facilities apart from the other students, and defendants' instructions forbidding her from using the bathroom used by other students, constituted a denial of her opportunity to equal utilization of educational facilities based upon her race, in violation of Michigan law.
21. As a direct and proximate result of the discriminatory treatment described above, REALITE PEEBLES suffered damages which include but are not limited to: loss of educational opportunity, anger, anxiety, and humiliation.

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WHEREFORE Plaintiff respectfully requests the Court grant judgment in her favor and award Plaintiff all compensatory damages and relief provided by Michigan and federal law including costs, interest and attorney fees.

Count II

VIOLATION OF 42 U.S.C. 1983

22. Plaintiff re-asserts the allegations contained in paragraphs 1-21 as though set forth fully herein.
23. Defendants' failure to provide plaintiff with an educational facility free from discrimination unlawfully deprives her right to equal protection under the laws of the United States and constitutes illegal discrimination based on race in violation of the Fourteenth Amendment to the United States Constitution.
24. Defendants were aware, or certainly should have been as it is well settled law, that race based discrimination against REALITE PEEBLES is a violation of her constitutionally and federally protected civil rights.
25. Defendants' actions of requiring plaintiff to utilize restroom facilities different from other students and of forbidding her from using the facilities used by other students, constituted a denial of her opportunity to equal utilization of educational facilities based upon her race, in violation of the United States Constitution.

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26. As a direct and proximate result of the discriminatory treatment described above, REALITE PEEBLES suffered damages which include but are not limited to: loss of educational opportunity, anger, anxiety, and humiliation.

WHEREFORE Plaintiff respectfully requests this Court grant judgment in her favor and award Plaintiff all compensatory damages and other relief provided by Michigan and federal law including costs, interest and attorney fees.

COUNT III

VIOLATION OF TITLE IV OF THE CIVIL RIGHTS ACT OF 1964

AND THE EQUAL ACCESS TO EDUCATION ACT

27. Plaintiff re-asserts the allegations contained in paragraphs 1-26, as though set forth fully herein.
28. Defendants' failure to provide plaintiff with an educational facility free from discrimination unlawfully deprived her of her right to equal protection under the laws of the United States, based upon her race, in violation of the Fourteenth Amendment to the United States Constitution.
29. Defendants were aware, as it is well settled law, that the discrimination against REALITE PEEBLES, based upon her race, constitutes a violation of her constitutionally and federally protected civil rights.

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30. Defendants' failure to protect plaintiff from harassment based on her race, significantly impeded her Constitutionally-protected access to an education and violates the Equal Access to Education Act and Title IV of the Civil Rights Act of 1964.
31. Defendants' policy requiring REALITE PEEBLES to use separate bathroom facilities and in forbidding her from using the facilities used by other students, constitutes a denial of her opportunity to equal utilization of educational facilities based upon her race, and therefore violates state and federal law, as previously described.
32. As a direct and proximate result of the discriminatory treatment described above, REALITE PEEBLES suffered damages which include but are not limited to: loss of educational opportunity, anger, anxiety, and humiliation.

WHEREFORE Plaintiff respectfully requests this Court grant judgment in her favor and award Plaintiff all compensatory damages and relief provided by Michigan and federal law including costs, interest and attorney fees.

COUNT IV

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

33. Plaintiff re-alleges the allegations contained in paragraphs 1-32, as though set forth fully herein.
34. The above-described conduct of defendant, JEFF TOUSLEY, was by all reasonable standards extreme and outrageous.

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35. Defendant TOUSLEY'S discriminatory conduct against REALITE PEEBLES was intentional.
36. The above-described conduct of defendant TOUSLEY was so reckless that it demonstrated a substantial lack of concern for whether an injury could result to REALITE PEEBLES and therefore constituted gross negligence according to Michigan law.
37. Defendant TOUSLEY'S conduct proximately resulted in severe emotional distress to REALITE PEEBLES causing humiliation, anger and anxiety.

WHEREFORE Plaintiff respectfully requests this Court grant judgment in her favor and award Plaintiff all compensatory damages and relief provided by Michigan and Federal law including costs, interest and attorney fees.

COUNT V

FAILURE TO TRAIN - THOMAS J. STOBIE

38. Plaintiff re-alleges the allegations contained in paragraphs 1-37 as though set forth fully herein.
39. Defendant STOBIE, as the superintendent of the Frankfort-Elberta School System was obligated to properly train the employees under his direction in the requirements of state and federal law with respect to providing educational services and access to public facilities in a non-discriminatory manner.

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40. The failure to provide its employees, including defendant TOUSLEY appropriate training regarding the most basic rights of the students constituted a deliberate indifference to the constitutional rights of plaintiff.
41. The failure of defendant STOBIE to provide adequate training to its employees resulted in the previously-described deprivation of the constitutional rights of REALITE PEEBLES.
42. As a direct and proximate result of the discriminatory treatment described above, REALITE PEEBLES suffered damages which include but are not limited to: loss of educational opportunity, anger, anxiety, and humiliation.

WHEREFORE Plaintiff respectfully requests the Court grant judgment in her favor and award Plaintiff all compensatory damages and relief provided by Michigan and federal law including costs, interest and attorney fees.

COUNT VI

FAILURE TO TRAIN - FRANKFORT-ELBERTA BOARD OF EDUCATION
AND FRANKFORT-ELBERTA AREA SCHOOL DISTRICT

43. Plaintiff re-alleges the allegations contained in paragraphs 1-42 as though set forth fully herein.
44. Defendants BOARD OF EDUCATION and SCHOOL DISTRICT were obligated to properly train the district employees in the requirements of state and federal law for providing educational services and access to public facilities in a non-discriminatory fashion.

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45. Defendant SCHOOL DISTRICT'S failure to provide its employees, including defendant TOUSLEY regarding the most basic rights of its students, constituted a deliberate indifference to the constitutional rights of REALITE PEEBLES.
46. The failure of defendants BOARD OF EDUCATION and SCHOOL DISTRICT to provide adequate training to its employees, resulted in the previously-described deprivation of the constitutional rights of REALITE PEEBLES.
47. As a direct and proximate result of the discriminatory treatment described above, REALITE PEEBLES suffered damages which include but are not limited to: loss of educational opportunity, anger, anxiety, and humiliation.

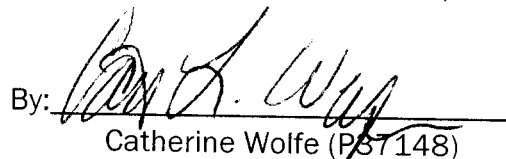
WHEREFORE Plaintiff respectfully requests the Court grant judgment in her favor and award Plaintiff all compensatory damages and relief provided by Michigan and federal law including costs, interest and attorney fees.

THOMPSON, O'NEIL & VANDERVEEN, P.C.

Dated: December 5, 2005

By: 

Daniel P. O'Neil (P37051)

By: 
Catherine Wolfe (P37148)

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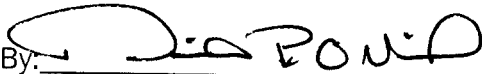


JURY DEMAND

NOW COMES Plaintiff, EUNIECIA SNYDER, mother and Next Friend of REALITE PEEBLES, a minor, by her counsel, THOMPSON O'NEIL & VANDERVEEN and, in accordance with F.R.C.P. 38(b), demands a trial by jury in the above-entitled matter.

THOMPSON, O'NEIL & VANDERVEEN, P.C.

Dated: December 5, 2005

By: 
Daniel P. O'Neil (P37051)

By: 
Catherine Wolfe (P37148)

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